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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: AUG 15 2002

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as an associate minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an associate minister immediately preceding the April 24, 2001 filing date of the petition. In addition, the director determined that the petitioner had not established that the position is a qualifying religious occupation.

In denying the petition, the director noted that the petitioner has submitted only a fragmentary copy of a log maintained by the beneficiary. On appeal, the petitioner overcomes this finding by submitting a new copy of the log that covers the period from September 1998 to January 2001. The petitioner has also submitted copies of a substantial number of canceled checks, indicating that the petitioning church has provided the beneficiary with rent and "allowance" payments since late 1998. These checks are strong evidence that the petitioner paid the beneficiary as claimed.

The director had indicated "[t]he Service [now the Bureau] is not entirely persuaded that the duties of this position require specialized religious training." The reference to religious training is more germane to aliens in a "religious occupation," which is a different category than "minister." Counsel asserts on appeal that the beneficiary has been "working solely [as] a Minister" for the petitioner. The petitioner has submitted a copy of the beneficiary's certificate of ordination, dated July 12, 1998 (although church officials did not sign the certificate until April and September of 1999). It is not clear that the director held the petitioner to the appropriate standard, i.e. demonstrating that the beneficiary meets the regulatory definition of a minister at 8 C.F.R. § 204.5(m)(2):

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Ordination, as documented in the record, would appear to represent "authorization" by the denomination. In this respect, certain kinds of evidence would be very helpful in this matter (such as contemporaneous documentary evidence of the beneficiary's officiation at weddings, funerals, baptisms, etc.) but the director does not appear to have requested such evidence. If it is the petitioner's position that "associate minister" is a religious occupation, rather than a religious vocation (which requires ordination or other authorization), then the beneficiary's ordination would seem to be irrelevant. The petitioner must clarify whether the beneficiary works in a vocation or a religious occupation; the essential requirements for the two designations are not identical.

We note that the petitioner has submitted information which raises significant questions, either because of inconsistencies in that information, or because of other issues that arise from the documentation. The petitioner previously filed a religious worker petition on the beneficiary's behalf on October 23, 1996. That petition was denied and a subsequent appeal was dismissed.

In the 1996 petition, the petitioner indicated that the beneficiary had been the church's assistant pastor since August 1994. (The beneficiary is in fact named in the church's articles of incorporation as one of its founders and the "church warden.") As noted above, however, the beneficiary was apparently not ordained until July 1998.

In the original petition, the petitioner indicated that it would pay the beneficiary \$18,000 per year. The initial petition also included Forms W-2 and other tax records showing that, in 1994 and 1995 (the most recent years for which W-2s were then available), the beneficiary worked for several employers including Marj Broad Corporation, Burns International Security Services, and Wells Fargo Guard Services. On his 1994 and 1995 tax returns, the beneficiary identified his occupation as "security officer."

Pursuant to section 101(a)(27)(C)(ii)(I) of the Act and 8 C.F.R. § 204.5(m)(1) and (4), an alien minister seeking special immigrant religious worker classification must seek to enter the U.S. solely to work as a minister. The record, however, contains solid evidence that the beneficiary has worked as a security guard.

The petitioner now states that it will pay the beneficiary only \$12,000 per year, rather than the \$18,000 offered seven years ago. The canceled checks referenced above are roughly consistent with the lower amount. Given this reduction in the proffered compensation, along with tax records that prove the beneficiary has worked as a security guard during his association with the petitioning church, the director should instruct the petitioner to submit evidence to show that the beneficiary is now solely employed as a minister, as the statute and regulations require. This is another reason why it is critical to determine whether the beneficiary is to be considered a "minister" or "other religious worker."

We note that the director has already noted the petitioner's failure to submit tax records in relation to the more recent petition, but this assertion has been couched in terms of proof of employment. The petitioner should be afforded one final opportunity to produce the beneficiary's tax returns from 1999 onward. If it is the petitioner's position that the beneficiary has never paid income taxes on the thousands of dollars that the church has paid him, then this apparently deliberate evasion of federal tax law is a matter that demands a thorough, compelling, and if at all possible, well-documented explanation. Claimed ignorance of tax filing requirements is not an acceptable explanation, as the above tax records also indicate that the beneficiary paid income taxes in the United States as early as 1994. Tax documents from recent years would also be a valuable resource in determining whether the beneficiary has truly been employed solely with the church, or whether he has continued his documented career as a security guard. Because of the questions and inconsistencies noted above, any further tax returns submitted by the petitioner would have to be certified by the Internal Revenue Service.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.